

INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
31 HOPEINS PLAZA
BALTIMORE, MD 21201

DEPARTMENT OF THE TREASURY

PERSON TO CONTACT:
[REDACTED]

CONTACT TELEPHONE NUMBER:
[REDACTED]

IN REPLY REFER TO:
[REDACTED]

DATE: MAY 10 1995

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted indicates that you were incorporated [REDACTED], under the laws of the State of [REDACTED] "to benefit children who have lost or are losing a parent to cancer, by providing supplemental funds for higher educational purposes. You have also established that this corporation is organized exclusively for charitable purposes and adequate provision has been made to provide for the distribution of your assets in the event your organization dissolves.

The primary activity of your organization, as described in your application, will be to raise funds by running an annual marathon race where individuals provide funding through sponsorship of your founder during the race. Funds will be calculated on a per mile basis.

You further state in your application that on [REDACTED], over \$[REDACTED] was raised through the "[REDACTED]". These funds have been earmarked to be set aside to pay for the education of [REDACTED].

You also state that you expect your founder, [REDACTED], to run one race annually which will be paid for by soliciting sponsorships from individuals on a per mile basis. You further state that you also expect to raise funds by raffling off a color television set annually.

You indicate in your application that "From each race, part of the money will go towards [REDACTED]'s education (when they are 18 years old until 21 years of age) and the rest will go to other kid's education that have had a parent die or is dying of cancer."

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	5-2-95	5/8/95	5/10/95				

In your application, you also list some criteria that will be used to select other possible recipients of your scholarship assistance. The "Provisions" document submitted with your application lists such criteria as age, residency requirements, financial and record data, including income tax returns, savings and checking accounts, life insurance rewards from deceased parents and award renewal criteria.

You also indicate that "[redacted] was originally founded to assist [redacted]. The purpose of this foundation is to first provide funds for their career education, then others in similar situations." Your application also states that "To ensure this foundation has enough capitol for at least [redacted]'s education, we will not be granting awards until the year [redacted], in order for our capitol to appreciate."

Section 501(c)(3) of the Internal Revenue Code provides for exemption from Federal income tax for organizations which are organized and operated exclusively for charitable, religious, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations specifies that an organization is organized for one or more exempt purposes, if its Articles of Incorporation limit the purposes of such organization to exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3), unless it serves a public rather than a private interest. Thus to meet the requirements of this subparagraph, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes, if more than an insubstantial part of its activities serve private interests.

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905 (1943), it was held that a trust set up for the benefit of an aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentleman was in financial need, this was a private trust, not a charitable trust, because it was created and operated for the benefit of specified persons. A trust or corporation organized and operated for the benefit of specific individuals is not charitable, regardless of an established financial need.

Likewise, in Revenue Ruling 57-449, published in Cumulative Bulletin 1957-2, on page 622, a trust set up to pay a certain sum to all individuals enrolled in a certain school on a particular date was held to be a private trust, not a charitable trust, because the beneficiaries were a group of identifiable individuals.

Revenue Ruling 67-367, 1967-2, C.B., 188, describes a non-profit organization whose sole activity was the operation of a "scholarship" plan. This plan granted scholarships to pre-selected, specifically named individuals. To be exempt under section 501(c)(3), an organization must serve a public rather than a private interest. It must not be operated for the benefit of private interests such as designated individuals. This revenue ruling held that this organization did not qualify for exemption because it served private rather than public charitable and educational interests required by section 501(c)(3).

In Better Business Bureau v. United States, 326 U.S. 279-283, (1945), the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. To qualify for exemption under section 501(c)(3), the applicant organization must show (1) that it is organized and operated exclusively for religious, or charitable purposes, (2) that no part of the net earnings inures to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See Kenner v. Commissioner, 318 F. 2d. 632, (7th Cir. 1963).

Our review of the application submitted indicates that your articles of incorporation meet the requirements of the organizational test of section 501(c)(3).

However, in regard to the operational test required for exemption under this section, we have determined that like the organization described in Revenue Ruling 67-367, your primary activity is raising funds for [redacted] pre-selected designated individuals, [redacted].

While you indicate that you expect to provide financial assistance to other children in similar circumstances, you state that "the purpose of this foundation is to first provide funds for the career education of [REDACTED]. Your application further states that "To ensure that this foundation has enough capital for at least [REDACTED]'s education, we will not be granting awards until the year [REDACTED], in order for our capital to appreciate."

Based on the information submitted, we have determined that you are not operated exclusively for educational and charitable purposes. While you state that you expect to assist other children in funding their education, the fact that you plan to withhold funding of any grants until the year [REDACTED] is evidence that your primary activity is to assist only the [REDACTED] children. As described in Revenue Ruling 67-367, this arrangement clearly serves the private interests of designated individuals and indicates that your organization is not operated exclusively for public purposes as required by section 501(c)(3).

Therefore, we have concluded that you do not qualify for exemption from federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination, you are required to file federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter.

Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies.

Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determined that the organization has exhausted all administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone phone number are shown in the heading of this letter.

Since [REDACTED]

[REDACTED]
District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]